



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Date: May 3, 2004

Darin Barri and Ray Martin

Serial No. : 10/660,344

Our Docket No. : MAT 3H5

Filed : September 10, 2003

For : BREATH-SENSITIVE TOY

**Mail Stop MISSING PART**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313

Sir:

**PETITION UNDER 37 C.F.R. § 1.47(a)**

Mattel, Inc., asserted assignee of the present invention, respectfully requests that the subject application be accorded status under 37 C.F.R. § 1.47(a) because one of the co-inventors, namely Ray Martin, refuses to join in the application.

The attached redacted letter sets out the pertinent facts supporting the conclusion that Mr. Martin refuses to join in the application. Portions of the letter are redacted to protect confidential information of Mattel, Inc., and to remove irrelevant statements. Mattel respectfully submits that Mr. Martin's letter constitutes an express written refusal to join in the application.

The attached letter shows the following.

1) ~~Mr. Martin was presented with signature papers for a "breath~~

detector." In response he wrote, "I respectfully decline to sign the

document that Mattel, Inc. has sent me.”

- 2) Mr. Martin submitted the design at issue during his tenure at Mattel, Inc.

The last known address of inventor Martin, as of May 3, 2004, is 3621 Emerald Street, Apt 31, Torrance, California 90503. The last known phone number is 310-370-5176. The undersigned left several messages on an answering machine at that number, and provided a toll-free call back number (800-565-4117), but no call or message has been received as of the signing of this petition.

The current address of the other inventor, Darin Barri, is provided on the Declaration and Power of Attorney that is being filed herewith.

Mattel, Inc. respectfully notes that this Declaration and Power of Attorney was signed by all available inventors, namely Darin Barri, with the signature block of the non-signing inventor Ray Martin left blank. Mattel, Inc. therefore respectfully requests that this Declaration be treated as having as having been signed by all the available joint inventors on behalf of the non-signing joint inventor, as provided in M.P.E.P. § 409.03.

Mattel, Inc. therefore respectfully requests that the application be allowed to proceed without the signature of inventor Martin. Such action is necessary to preserve the rights of the assignee, Mattel, Inc. because failure to proceed could permit an intervening third party to establish an earlier filing date.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on May 3, 2004.

George Painter  
George Painter

Date of Signature: May 3, 2004

Respectfully submitted,  
KOLISCH HARTWELL, P.C.

Charles H. DeVoe

Charles H. DeVoe

Customer No. 23581

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of Attorneys for Mattel, Inc.

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January 23, 2004

Joan Rose  
Mattel, Inc.  
333 Continental Boulevard  
El Segundo, California, 90245

Dear Joan,

I respectfully decline to sign the document that Mattel, Inc. has sent me. Mattel, Inc. holds no claim to the designs that I had submitted during my tenure at Mattel, Inc. I was hired by Mattel, Inc, because of my expertise in designing circuitry utilizing discrete devices.

Another point of contention is the appearance of Darin Barri's name as sole or first joint inventor.

His name should never be associated with the breath detector. The request for a breath detector originated with Mike Andrews. He requested a whisper detector and I advised him that I already had a design that could detect an inaudible whisper because it relied on exhaled moisture, whether it is accompanied by a sound or not.

Regards,

*Ray Martin*

Ray Martin



**PATENT**

SN/Pat. No. 10/660,344 KH File No. MAT 3H5 Atty/Asst. CHD:gp

Applicant(s) Darin Barri et. al. Date May 3, 2004

Title BREATH-SENSITIVE TOY

The following has been received in the U.S. Patent and Trademark Office on the date stamped hereon:

<input type="checkbox"/> PA w/ <u>    </u> sheets of drawings	<input type="checkbox"/> Transmittal
<input checked="" type="checkbox"/> Declaration / Power of Attorney	<input type="checkbox"/> Small Entity Status
<input type="checkbox"/> Assignment	<input checked="" type="checkbox"/> Extension of Time <u>3</u> mos.
<input type="checkbox"/> Response to OA dated: <u>    </u>	<input type="checkbox"/> Correction of Filing Receipt
<input type="checkbox"/> Issue Fee /Publication Fee	<input type="checkbox"/> Maintenance Fee No. <u>    </u>
<input checked="" type="checkbox"/> Response to MP dated: <u>12/2/03</u>	<input checked="" type="checkbox"/> Fee Transmittal
<input checked="" type="checkbox"/> Information Disclosure Statement (with <u>1</u> PTO-1449 forms and <u>3</u> references)	
<input checked="" type="checkbox"/> Other <u>Petition Under 37 CFR §1.47(a)</u>	
<input type="checkbox"/> Other <u>    </u>	
<input checked="" type="checkbox"/> Check for \$ <u>1,210.00</u> Other <u>    </u>	
<input checked="" type="checkbox"/> Certificate of Mailing <input checked="" type="checkbox"/> First Class <input type="checkbox"/> Express Mail No. <u>    </u>	

